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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,685	01/14/2004	Stephen B. Falloon	GRLK-P076-US-01	4124

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EXAMINER

COONEY, JOHN M

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/757,685

Applicant(s)

FALLOON ET AL.

Examiner

John m. Cooney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-12 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*FE*

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Applicant's arguments filed 12-27-04 have been fully considered but they are not persuasive.

Rejection of claims 1,2,8, and 9 under 35 USC 112 1<sup>st</sup> paragraph is withdrawn in light of applicants' amendments.

The rejections of claims 5-7 and 12-14 under 35 USC 112 1<sup>st</sup> and 2<sup>nd</sup> paragraph are withdrawn in light of the acknowledgement that the "oxabicyclo" group is an epoxide group and that the acid group is also a hydroxide group.

### ***Specification***

The disclosure is objected to because of the following informalities: The amendment to the specification submitted 2-2-2004 is unclear. It is not understood how or why applicants are attempting to associate continuing data benefit from provisional application number 60/439,886. This application is not related to the instant application in any way, shape, or form.

Appropriate correction and/or clarification is required.

The following rejections are maintained:

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Molotsky et al.(3,957,702).

Molotsky et al. discloses preparations of flexible polyurethane foams which includes acid scavengers, phosphorus composition (see column 1 lines 7-24, column 2 lines 12-60, column 5 line 5 – column 6 line 27, column 6 line 62 et seq, column 8 lines 45-50, and column 9 line 35-42, as well as, the entire document).

Rejection is maintained for the reasons set forth above. Although applicants have removed amines from their listing of acid scavenger species, "ethanol amine" still reads on the hydroxide component containing acid scavenger of applicants' claims. Applicants' arguments have been considered, but they do not point to distinctions which overcome examiner's position of anticipation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jourquin et al. ('453) in view of Blundell et al.('993), Eling et al.('035), Rose et al.('760), and Smith ('192).

Jourquin et al. discloses flexible, flame retardant polyurethane foams (see column 7 lines 21-65, as well as, the entire document).

Jourquin et al. differs in that it lacks all of applicants' specified flame retardants. However, Blundell et al. (see column 3 lines 3-21, and entire document), Eling et al.(column 12 lines 13-15 and entire document), and Rose et al.(see the entire document) disclose the employment of the claimed flame retardants in polyurethane foam applications for the purpose of imparting their flame retarding effect. Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the flame retardants of Blundell et al., Eling et al., and Rose et al., alone or together, in the foam preparations of Jourquin et al. for the purpose of imparting their flame retarding effect in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Jourquin et al. differs from applicants' claims in that acid scavengers are not specifically required. However, Smith discloses the employment of acid scavengers in polyurethane foam synthesis for the purpose of resisting deleterious hydrolysis and acid formation (see column 5 lines 8-13, as well as, the entire document). Accordingly, it would have been obvious for one having ordinary skill in the art to have employed the acid scavengers of Smith in the

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preparations of Jourquin et al. for the purpose of preventing hydrolysis and acid formation from the flame retardants in order to arrive at the products and processes of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

Rejection is maintained for the reasons set forth above. Applicants' arguments have been considered, but rejection is maintained as proper as set forth above. The art is considered to be analogous, and properly combined for the reasons set forth in the rejection. Further, the reference is not seen to teach away from the use of the acid scavengers as suggested by applicants, but rather their use is taught for the purpose as specified.

***Allowable Subject Matter***

Claims 6,7,13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Unexpected friability results are established for the combinations defined by claims 6,7,13, and 14.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

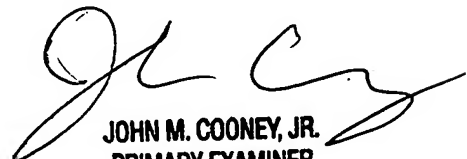
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN M. COONEY, JR.  
PRIMARY EXAMINER  
Group 1700